

**From:** Morgan, Jeanette  
**Sent:** Tue 10/27/2015 3:13:42 PM  
**Subject:** FW: Water Law News for October 26, 2015



## Water Law News for October 26, 2015

### **Bloomberg BNA** Daily Environment Report™

#### *Oil & Gas*

##### [North Dakota Approves Credits for Gas Flaring Reduction](#)

The North Dakota Industrial Commission Oct. 22 voted to offer flaring credits to oil producers who are able to meet the state's natural gas flaring-reduction goals....

#### *Oil Spills*

##### [Alabama Settles Spill Suit With Transocean For \\$20M](#)

Alabama received \$20 million in a settlement with oil rig operator Transocean related to the company's involvement in the 2010 Gulf of Mexico oil spill, the state's attorney general and governor announced....

## *Trade*

### Murkowski Asks GAO to Look at Oil Exports to Canada

The Senate's main champion of lifting the ban on most crude oil exports has added a new oil trade task to her to-do list: overhauling the 30-year-old process governing oil exports to Canada. ...

## *Trade*

### WTO to Debate Trade Facilitation, Environmental Goods

The World Trade Organization the week of Oct. 26 will unveil its annual trade report that will focus, in part, on the benefits and challenges of implementing the Trade Facilitation Agreement (TFA). ...

## *Water Pollution*

### Alcoa Gets Water Quality Certification for N.C. Project

North Carolina regulators approved a water quality certification for Alcoa's Yadkin Hydroelectric Project, allowing it to proceed with obtaining a long-term operating license from the Federal Energy Regulatory Commission....

## *Water Pollution*

### Effort to Strip West Virginia NPDES Authority Denied

The U.S. Court of Appeals for the Fourth Circuit declined to order the Environmental Protection Agency to respond to demands by environmental groups that West Virginia be stripped of its authority to run its water permitting program after...

## *Water Pollution*

### Gold King Mine Spill Sparks Hearings, Not Lobbying

The 3-million-gallon toxic mining waste spill in Colorado triggered by an Environmental Protection Agency contractor has prompted a flurry of Capitol Hill hearings and legislation but minimal lobbying....

## *Water Pollution*

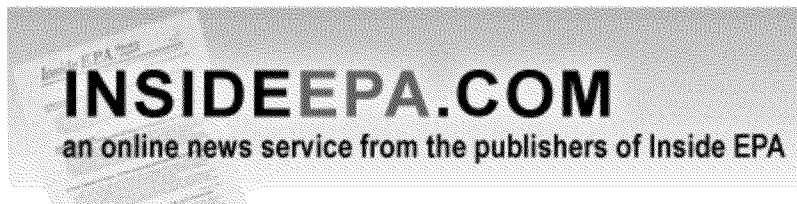
### Gold King Mine Water Came From Another Mine: Owner

The owner of the mine in southwest Colorado where the Environmental Protection Agency triggered a 3 million gallon spill of mining waste and sediment said a recent Interior Department review shows the source of the contaminated water was not...

## *Wetlands*

### Court: Mitigating Mississippi Wetlands Loss Is a 'Taking'

A Mississippi agency's application for a Clean Water Act dredge-and-fill permit and suggestion that a local developer's property be used as wetlands mitigation resulted in a taking, the state supreme court ruled (Ward Gulfport...



## **Latest News**

### **EPA Highlights NPDES Impacts Of CWA Rule In Push for Appellate Review**

EPA is highlighting the National Pollutant Discharge Elimination System (NPDES) impacts of its Clean Water Act (CWA) jurisdiction rule to show that the rule is a permitting limitation under the water law and therefore should be reviewed by the appellate courts rather than the myriad district courts where challenges to the rule are pending.

### **House Panel, Rural Water Utility Groups Look To Fast-Track SDWA Bill**

A bipartisan group of House lawmakers and rural water utilities are urging swift passage of a measure to reauthorize funds for technical assistance to small public water utilities and to direct EPA to provide grants or make cooperative agreements with non-profit organizations, which the utilities say has long been needed to keep in compliance with changing federal drinking water standards.

### **EPA Advisory Panel Encourages Full Lead Service Line Replacements**

An EPA advisory panel is recommending that the agency provide public water systems with suggestions for how the systems can encourage full replacements of lead service lines, including "creative" financing options for low-income communities as a way to address environmental justice concerns.

## **Michigan Water Crisis Highlights Call For Updated Lead Drinking Water Rule**

A recent drinking water crisis in Flint, MI, where the city experienced elevated levels of lead in drinking water after switching water sources, highlights a call from EPA advisors to include new monitoring and notification requirements in a revised lead and copper drinking water rule.

# Greenwire

## **OIL AND GAS:**

### **BLM grants permit for 1st oil production well in Alaska reserve**

Scott Streater, E&E reporter

Published: Friday, October 23, 2015

*Correction appended.*

The Bureau of Land Management has formally issued a permit that will allow ConocoPhillips Co. to drill the first oil production well in the National Petroleum Reserve in Alaska (NPR-A).

BLM already approved in February a record of decision for the \$890 million Greater Mooses Tooth-1 (GMT1) project, which calls for up to 33 development and injection wells on a single, nearly 12-acre drilling pad on the reserve's northeast corner (Greenwire, Feb. 16).

But BLM needed to issue a formal drilling permit, along with a right-of-way (ROW) grant before production could begin at the reserve, said agency spokesman Mitch Snow.

The record of decision allows ConocoPhillips to build an 8-mile road through a protected area around Fish Creek that BLM had established to protect hunting opportunities for a nearby Native Alaskan village. But it also required ConocoPhillips to pay \$8 million to establish a compensatory mitigation fund to support a regional mitigation strategy that will protect lands of environmental, subsistence or cultural significance to local Native Alaskans before production could begin.

ConocoPhillips has paid \$1 million for the compensatory mitigation fund so far, Snow said.

BLM Director Neil Kornze called issuance of the permit and right-of-way grant "an important milestone for realizing the promise" of the agency's 2013 Integrated Activity Plan that identified 11 million acres for protection and close to 12 million acres and 72 percent of the technically and economically recoverable oil in the reserve available for development.

"I'm proud of this collaborative effort to ensure thoughtful, balanced, and responsible development in the NPR-A that will provide additional economic security for Alaskans as well as a new source of oil for the Trans-Alaska Pipeline System," Kornze said in a statement.

The 22.5 million-acre reserve sits atop nearly 1 billion barrels of untapped oil and trillions of cubic feet of natural gas, and the ConocoPhillips project is expected to produce up to 30,000 barrels of oil a day. When it does, it will mark the first production and transportation of oil from federal lands in the NPR-A to the

Trans-Alaska Pipeline, BLM said.

"This is good news for ConocoPhillips," Natalie Lowman, a company spokeswoman in Alaska, said in an emailed statement. "We are pleased that the BLM has issued the permit to drill and the ROW for Greater Mooses Tooth No. 1 and we are seeking approval for funding."

The decision to issue the permit and ROW grant was also praised by Alaska Gov. Bill Walker (I).

"The National Petroleum Reserve is estimated to hold more than 800 million barrels of oil," Walker said in a statement. "As Alaska grapples with a \$3.5 billion deficit due in part to low oil prices and production, we applaud the hard work by ConocoPhillips to obtain this drilling permit and right-of-way grant for the Greater Mooses Tooth Unit."

But the northeast corner of the reserve has an array of wildlife-rich areas, including Teshekpuk Lake, the Colville River and the Utukok River Uplands, which provide calving grounds for the largest caribou herd in Alaska.

How to balance those two interests has been a source of debate almost from the moment the NPR-A was established in 1923 as an emergency oil supply for the Navy. Congress transferred the site to the Interior Department in 1976.

Some environmental groups have grave concerns about drilling in the reserve, and they are once again calling on BLM to devote more resources to protecting the Arctic's fragile wetlands and wildlife.

"This project will take place just a short distance away from the Teshekpuk Lake and Colville River special areas, and its impacts will be felt throughout the entire reserve and surrounding communities," said Leah Donahey, senior campaign director for the Alaska Wilderness League. "Moving forward, the need to mitigate the inevitable consequences of drilling in a world-class landscape like the reserve must be addressed."

BLM Alaska State Director Bud Cribley said in a statement that the agency continues to work closely with ConocoPhillips to ensure "a responsible path forward in the development of oil and gas resources in the NPR-A."

Cribley added that the permit to drill "lays the groundwork for future development and our commitment to serve America's energy needs and Alaska's economic viability."

**Correction:** *Because of incorrect information provided, an earlier version of this story misstated the amount ConocoPhillips has paid to the compensatory mitigation fund.*

## **CALIFORNIA:**

### **L.A. raises water rates after residents conserve big time**

Published: Friday, October 23, 2015

Los Angeles residents have done such a good job at conserving water that the city's Department of Water and Power is now short on revenue.

To fill the \$380 million shortfall, the Board of Water and Power Commissioners approved a rate increase this week that will cost the average customer about \$1.80 more per month starting next year.

"We have no other way of recovering the revenue to maintain the system for our customers," said Neil Guglielmo, DWP director of budget, rates and financial planning.

Los Angeles residents reduced their water consumption by about 10 percent more than expected, officials said, leaving the agency \$57 million in the red and with no spare revenue for necessary repairs and maintenance.

The 3.6 percent rate adjustment will expire at the end of 2016, and officials stressed that customers who have worked to reduce their water use will still end up saving money overall.

"If they've conserved, they're still going to save on their bill," Guglielmo said (Stevens/Walton, Los Angeles Times, Oct. 21). -- **BTP**

## **OIL AND GAS:**

### **Women 'don't understand' fracking -- U.K. lobbyist**

Published: Friday, October 23, 2015

According to the new chairwoman of the United Kingdom's oil and gas drilling lobby, women are less likely than men to support fracking because they rely more on emotions than facts.

"Women, for whatever reason, have not been persuaded by the facts. More facts are not going to make any difference," said Averil Macdonald, who was appointed to head U.K. Onshore Oil and Gas this week. "What we have got to do is understand the gut reaction, the feel. The dialogue is more important than the dissemination of facts."

A University of Nottingham and YouGov survey recently found that out of 7,000 people, 31.5 percent of women felt that shale gas exploration should be allowed in Britain, as opposed to 58 percent of men.

Macdonald, who is taking on the part-time chairwoman position in addition to her work as a professor of science engagement at Reading University, said she believed the problem stems partly from many women having ended their studies of science at age 16. She plans to work on engaging with different communities across the United Kingdom to help reassure people about the safety of natural gas drilling.

"Not only do [women] show more of a concern about fracking, they also know that they don't know and they don't understand. They are concerned because they don't want to be taking [something] on trust. And that's actually entirely reasonable" (Chris Johnston, London Guardian, Oct. 22). -- **BTP**

## **WATER POLLUTION:**

### **Interior's mine spill report ratchets up pressure on EPA**

Manuel Quiñones, E&E reporter

Published: Friday, October 23, 2015

*This story was updated at 3:52 p.m. EDT.*

Yesterday's Department of the Interior release of its investigation into this summer's abandoned mine spill in Colorado is intensifying scrutiny of U.S. EPA's role in the accident.

EPA has long pointed to the report as an independent probe into the incident and one that would provide clarity about the agency's work at the Gold King mine site. But EPA critics are only intensifying their questions after its release.

"This report exposes the role the EPA's gross negligence had in triggering a disaster that has culturally and economically devastated the Navajo Nation," said Navajo Nation President Russell Begaye. "The EPA and all responsible parties must be held accountable."

EPA was at Gold King at the request of Colorado regulators to help prevent a polluted water blowout from the abandoned mine site. But agency contractors instead caused 3 million gallons to spill down the Animas and San Juan rivers, affecting several states and tribes.

Yesterday's Bureau of Reclamation report said EPA and its contractor, Environmental Restoration LLC, could have prevented the blowout by conducting more planning and research into the amount of water that had built up.

The report also said EPA could have waited for a Reclamation consultant set to visit the site (E&ENews PM, Oct. 22). And it blames state regulators for an inadequately designed mine portal closure in 2009. The report also lamented a general lack of mine engineering experience in abandoned site reclamation work.

Sen. John Barrasso (R-Wyo.), chairman of the Senate Indian Affairs Committee, said in a statement, "Literally and figuratively, the EPA blew it."

Rep. Lamar Smith (R-Texas), chairman of the House Science Committee, said, "In the aftermath of the spill, EPA attempted to avoid responsibility by claiming the spill was 'inevitable.' However, the Interior Department's report clearly shows this was not the case."

Barrasso went on, "Responsibility for this disaster lands directly on the EPA's doorstep. I want to know who at the EPA will be held accountable for this disaster."

EPA, however, has not said whether it will discipline any staffer. It also has not provided specifics on how it has addressed the issue with its contractor, which has not returned a request for comment on the new report.

In a statement, EPA said workers didn't use a drill rig to explore the amount of accumulated water at Gold King because, according to an internal report, conditions were more difficult and unsafe compared with other sites.

The agency said it requested the Interior report "to provide an independent assessment of factors that contributed to the Aug. 5, 2015, Gold Mine incident. EPA will carefully review the report." The Office of Inspector General is also looking at developments surrounding Gold King.

The agency added, "This report, in combination with the findings of EPA's internal review of the incident, will help inform EPA's ongoing efforts to work safely and effectively at mine sites as we carry out our mission to protect human health and the environment."

But the report's authors noted they did not think their task was to find who was at fault. An Army Corps of Engineers peer reviewer said he would have wanted to see more information about EPA's handling of Gold King.

The current owner of the Gold King mine site, Todd Hennis, also released a statement in response to the

Interior Department report. He has long accused regulators of not listening to his concerns and originally didn't want EPA on his property.

Hennis blames water from other mine sites seeping into Gold King and says EPA made the situation worse by putting backfill material on the mine's entrance.

"The act of placing such a large amount of backfill on the entrance of the Gold King Mine also prevented the pressure of the water from clearing an outlet of the waters naturally," he said.

EPA said the agency has been in contact with Hennis' attorneys. EPA also has taken responsibility for the spill, halted other similar work and promised to compensate those affected. The agency said the Animas and San Juan rivers are back to pre-spill conditions.

But Begaye said, "It's time for President Obama to stop dragging his feet and take action to fix this disaster. The president needs to respond to bipartisan calls to issue an emergency declaration and instruct all federal agencies to assist the Navajo Nation instead of sending our requests back to the EPA."

## **Legislation next week**

EPA's defenders say blaming the agency for Gold King is like blaming firefighters for responding to a crisis. They say the agency is stepping up to help address potential abandoned mine site disasters because nobody else is or can.

And the Bureau of Reclamation report said the Gold King mine could have blown wastewater on its own had regulators not stepped in to act.

EPA has spent roughly \$500 million in addressing several dozen priority abandoned mine sites in recent years, a top agency official said this week.

Next week, Sens. Tom Udall and Martin Heinrich and Rep. Ben Ray Lujan, all New Mexico Democrats, plan to introduce mining law reform legislation, which would create a system for reclaiming old mine sites by charging current production. Such a proposal would mirror one already existing in the coal industry.

Reform proponents also say mining companies have too much leeway in mining on public land. Just this week, small-scale Oregon miners sued the state in federal court over rules to protect salmon, saying the measures infringed on their rights under current federal mining laws.

The same New Mexico Democratic lawmakers have introduced legislation to create a compensation office focused on Gold King to address concerns from states, tribes and affected parties about being made whole.

Republicans also have introduced compensation bills geared toward holding EPA liable and making the agency pay out of its own budget.

When it comes to abandoned mine cleanups, Republicans and the mining industry lean toward liability protections for good Samaritan groups and companies (*E&E Daily*, Oct. 22).

"There's a better way to address contamination in abandoned and inactive mines than the EPA's status quo, which lacks the technical expertise to accomplish the goal," said proponent Rep. Scott Tipton (R-Colo.).

"By empowering the people on the ground who have the engineering expertise and have been working



locally to address the problems in these mines for years, we can truly make strides to clean them up and limit further harm to the environment," he said.

Still, environmental advocates say good Samaritans alone are not enough to fix the problem. And the disagreement over how to clean up abandoned mine sites may, as in previous years, prevent any concrete action on Capitol Hill.



**CLIMATEWIRE — Mon., October 26, 2015**

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**1.NEGOTIATIONS:**

**Finance, compensation shaping up as endgame issues for Paris climate deal**

Former Defense Secretary Donald Rumsfeld once said, "You go to war with the army you have, not the army you might want." Climate change negotiators are saying something similar about the text they have going into December's landmark U.N. talks.

**2.REGULATION:**

**As legal onslaught begins, EPA tells states how to buy time on climate rule**

As expected, the publication of the final Clean Power Plan in the *Federal Register* on Friday brought on a swarm of lawsuits from opponents of the U.S. EPA rule.

**TODAY'S STORIES**

**3.EXTREME WEATHER:**

**Record-breaking hurricane gives Mexico little warning, floods parts of Texas**

**4.POLICY:**

**As Obama meets with Indonesia's president, activists push for action on forests and climate change**

**5.ELECTRICITY MARKETS:**

**Western state regulators see region 'ripe' for collaboration**

**6.BUSINESS:**

**China's nuclear industry looks for buyers abroad**

**7.FINANCE:**

**New investment index targets 'climate efficient' companies**

**8.REGIONS:**

**Arctic nations will push for cuts in methane, black carbon emissions in Paris talks**

**9.TRANSPORTATION:**

**Finnish company envisions world without cars via 'Uber Inter-city' platform**

**10.PUBLIC OPINION:**

**Texas poll shows jump in GOP support for belief in climate change**

**11.STATES:**

**Scientists offer to educate Ind.'s governor about climate change**

**12.CHINA:**

**Beijing's growth plans could help the environment -- report**

**13.CITIES:**

**Danish town aims for carbon neutrality with wind, efficiency and biogas**

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**14.POWER PLAN HUB:**

**EPA's Goffman, McCabe hit the road to tout Clean Power Plan**

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**ENERGYWIRE — Mon., October 26, 2015**

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**1. CLEAN POWER PLAN:**

**Opponents push to block rule while defenders prep for battle**

Defenders of U.S. EPA's Clean Power Plan are wading through stacks of challenges this week in the wake of a massive new legal assault against the climate rule.

**TOP STORIES**

**2. OIL:**

**Price is still too high for saturated market**

**3. ELECTRICITY MARKETS:**

**Western regulators see region 'ripe' for collaboration**

**4. EFFICIENCY:**

**Major Mo. utility's program in limbo after regulator rejection**

**ELECTRICITY**

**5. TECHNOLOGY:**

**Southern Co. makes global moves on coal gasification**

**6. PEOPLE:**

**To replace incoming CEO, ERCOT taps new general counsel**

**7. WIND:**

**Texas blows past production record**

**OIL AND GAS**

**8. NATURAL GAS:**

**Alaska gets sales guarantees for LNG project**

**9. NORTH DAKOTA:**

**Frack water program for farmers runs dry**

**10. PEOPLE:**

**Phillips 66 appoints new CFO**

**11. MARCELLUS SHALE:**

**Gas driller pulls out of parts of Pa., W.Va.**

**12. OFFSHORE DRILLING:**

**Norwegian gas field upgrades, expects first growth in years**

**13. TRANSPORT:**

**Increased oil train traffic brings more scrutiny from Minn. governor**

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**14. POWER PLAN HUB:**

**EPA's Goffman, McCabe hit the road to tout Clean Power Plan**

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